In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-24

BEAUTY-STYLE MODERNIZERS, INC., AND MORRIS JAKEL, PETITIONERS

v.

FEDERAL TRADE COMMISSION

No. 75-25

SAUL JAKEL, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

Petitioners are engaged in the sale of home improvement materials, supplies, and installation services. The Federal Trade Commission found that they violated provisions of the Truth-in-Lending Act, as amended, 15 U.S.C. 1601, *et seq.*, and the Federal Trade Commission Act, as amended, 15 U.S.C. 45(a), by failing properly to disclose in their printed contract forms and newspaper advertisements certain credit terms and information as required by the Truth-in-Lending Act and the Federal Reserve Board's Regulation Z (12 C.F.R. Part 226).

The Commission ordered petitioners to cease and desist from such violations, to furnish a copy of the cease and desist order to all present and future personnel engaged in advertising or extending consumer credit, and to notify the Commission if either of the individual petitioners becomes affiliated with a different business or if the corporate petitioner undergoes any change that may affect compliance obligations (Pet. App. 51a-54a). The court of appeals affirmed without opinion and directed petitioners to comply with the Commission's order (*id.* at 72a-73a).

Petitioner Saul Jakel (No. 75-25) contends that the Commission's decision is contrary to the weight of the evidence (Pet. 8-35). The Commission's findings and conclusions, however, are fully supported by substantial evidence, as summarized in the initial decision of the administrative law judge (Pet. App. 29a-41a) and in the opinion of the Commission (*id.* at 57a-66a).

Petitioners Morris Jakel and Beauty-Style Modernizers, Inc. (No. 75-24) argue that the Commission departed from the issues defined by a stipulation (Pet. 17-20). They claim that the stipulation (Pet. App. 14a-15a) foreclosed any inquiry by the Commission into their practices subsequent to December 31, 1969. The first stipulated issue, however, was whether petitioners "failed to obtain new contract forms prior to, during *or subsequent to* the [regulatory transition] period beginning July 1, 1969 and terminating December 31, 1969" (*id.* at 14a; emphasis added). See 12 C.F.R. 226.6(k) (1974 rev.).

Finally, all three petitioners contend that the Commission's remedial order is too broad and punitive. They claim that the cease and desist provisions are unnecessary because petitioners have already ceased their violations, and that the provisions requiring them to give copies of the

order to present and future employees[1] and to notify the Commission of any change in their business are punitive and unrelated to the Commission's regulatory responsibilities.

The standard cease and desist provisions, however, are reasonably designed to ensure that petitioners will not repeat their violations. Requiring that each employee be made aware of the Commission's order, and that petitioners notify the Commission of any changes in their business affiliations, reasonably facilitates efforts to ensure compliance with the cease and desist provisions. The order is remedial, not punitive.

It is therefore respectfully submitted that the petitions for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

ROBERT J. LEWIS,
General Counsel,
Federal Trade Commission.

AUGUST 1975.

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[1]Petitioners suggest that the order is ambiguous because it might be understood to require that they give copies of it to non-employees. If petitioners entertain serious doubt concerning the proper interpretation of the Commission's order, they may obtain the advice of the Commission pursuant to 16 C.F.R. 3.61(d), which provides that "[a]ny respondent subject to a Commission order may request advice from the Commission as to whether a proposed course of action, if pursued by it, will constitute compliance with such order."